



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 9, 2024

BY ECF

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Knight First Amendment Institute at Columbia University v. U.S. Dep't of Education.*, No. 24 Civ. 8393 (PAE)

Dear Judge Engelmayer:

Pursuant to the Court's Notice of Initial Pretrial Conference, ECF No. 8, and its December 6, 2024 Order declining to adjourn the conference, ECF No. 15, counsel for Plaintiff Knight First Amendment Institute at Columbia University ("Knight") and Defendant the United States Department of Education ("DOE") respectfully submit this joint pre-conference letter in advance of the initial pretrial conference scheduled for **December 10, 2024, at 9:30 a.m.**, in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Brief Description of the Case and History

This case concerns a FOIA request submitted by Knight to DOE on or about July 31, 2024, seeking records reflecting "guidance DOE has provided to post-secondary institutions concerning their obligations under Title VI to ensure nondiscrimination based on shared ancestry or ethnic characteristics." See ECF 1 (Complaint) ¶ 6. Specifically, the request sought (i) "[a]ll communications received from any post-secondary institution seeking guidance, clarification, or information regarding the institution's Title VI obligations to ensure non-discrimination based on shared ancestry or ethnic characteristics, from October 7, 2023 to the present"; (ii) "[a]ll communications sent to any post-secondary institution providing" such guidance, clarification, or information; (iii) "[a]ll presentations and training materials provided to post-secondary institutions regarding their Title VI obligations to ensure nondiscrimination based on shared ancestry or ethnic characteristics, from October 7, 2023 to the present"; and (iv) "[a]ll policies, procedures, memoranda, and guidance regarding the factors or criteria DOE considers in determining whether to investigate a post-secondary institution for discrimination based on shared ancestry or ethnic characteristics, from October 7, 2023 to the present." *Id.* ¶ 14.

Knight filed the complaint in this action on November 4, 2024; the U.S. Attorney's Office was served on November 18, 2024; and Defendant's answer is due December 18, 2024.

DOE made an initial production of records on December 6, 2024, consisting of links to five publicly available guidance documents and a PowerPoint presentation that DOE's Office of Civil Rights ("OCR") has provided to universities.

On December 6, 2024, counsel for Knight and DOE met and conferred regarding what other potentially responsive records may exist. During that meet and confer, DOE's counsel provided information regarding the searches that have been completed to date, including searches of technical assistance telephone logs that did not identify records responsive to the FOIA request. As a result of the meet and confer, the parties agreed that government counsel would follow up with DOE regarding certain discrete questions to determine whether additional responsive records may exist, and in what record systems. Plaintiff's counsel also agreed to provide additional information regarding whether and how it believes responsive records may exist in investigative files. This follow-up by both parties will inform future meet and confer discussions regarding what supplemental searches for responsive records may be warranted.

Contemplated Motions

There are no contemplated motions at this time.

Prospects for Settlement

The parties intend to continue to meet and confer regarding the supplemental searches that may be warranted and, to the extent those searches yield potentially responsive records, a schedule for processing those records.

Proposed Next Steps in the Litigation

Because this is a FOIA action, the parties understand Local Civil Rule 16.1 to exempt this case from the mandatory scheduling order requirement contained in Federal Rule of Civil Procedure 16(b). Accordingly, the parties do not believe the Court's standing Civil Case Management Plan is applicable to this matter.¹ However, counsel for the parties have discussed the appropriate next steps in this FOIA action, and propose the following:

DOE will file its answer on December 18, and the parties will follow up on the items identified during their meet and confer on December 6. The parties will continue to meet and confer to determine what additional searches may be warranted and the scope of such searches. The parties respectfully propose to submit a status report within thirty days of the initial pretrial conference, or by January 10, 2025, to advise the Court of the progress of their discussions and the anticipated time frame to complete any supplemental searches that the parties have agreed upon.

¹ In response to the first question on the Civil Case Management Plan, the parties report that they do not consent to conducting all proceedings in this case before a magistrate judge pursuant to 28 U.S.C. § 636(c).

We thank the Court for its consideration of this letter.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney
for the Southern District of New York

By: /s/ Jessica F. Rosenbaum
SARAH NORMAND
JESSICA F. ROSENBAUM
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, NY 10007
Tel.: (212) 637-2709/2777
Email: sarah.normand@usdoj.gov
jessica.rosenbaum@usdoj.gov

Counsel for Defendant

By: /s/ Scott Wilkens
SCOTT WILKENS
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
Tel.: (646) 745-8500
Email: scott.wilkens@knightcolumbia.org

Counsel for Plaintiff